

ARTICLE 2

ADMINISTRATIVE AGENCIES

Summary: This Article describes the various agencies involved in administration of the UDO. The jurisdiction, powers, and duties of each agency are described. These agencies include: the Planning Department, the Board of Adjustment, the City Council, the Planning and Zoning Commission, and the Historic Preservation Commission.

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2.1. PLANNING DEPARTMENT AND PLANNING ADMINISTRATOR.

2.1.1. ESTABLISHMENT OF PLANNING DEPARTMENT.

Pursuant to NCGS § 160D-402, the City hereby establishes the Planning Department of the City. The Planning Department shall perform the planning functions for the City and shall provide technical support and guidance for action on all plan and ordinance amendments and on applications for development approval. The Planning Department shall perform other functions as may be requested by the City Council or authorized by this Ordinance.

2.1.2. ESTABLISHMENT OF OFFICE OF PLANNING ADMINISTRATOR.

The City hereby establishes the Office of the Planning Administrator (the "Administrator") as a function of the Planning Director. The Administrator is charged with the authority and the duty to enforce this Ordinance. The Administrator is authorized to establish and delegate when appropriate, Department standards of operation and procedures consistent with the intent of this Ordinance. The Administrator or his delegee may also consult with other officials, boards or agencies with needed technical expertise (such as the Public Works Director or the Fire Chief). "Administrator" shall include staff authorized by the Administrator.

2.1.3. APPEALS FROM THE DECISION OF THE ADMINISTRATOR.

Appeals from the decisions of the Administrator in which it is alleged there is an error in an order, requirement, decision, or determination made by the Administrator in the enforcement of this Ordinance shall be made to the Board of Adjustment in accordance with § 3.7.

2.1.4. INSPECTION.

Pursuant to NCGS § 160D-1102, the Administrator is hereby designated the Zoning and Subdivision Inspector for the City. The Inspector is empowered to enter or inspect any building, structure, premises, or real property in the City upon which, or in connection with which, a development or land use is located or proposed for the purpose of inspection to ensure compliance with the provisions of this Ordinance. Such inspections shall be carried out during business hours unless the Administrator determines that an emergency exists. Entry onto private property for the

purpose of inspection shall be made only after securing permission from the owner and upon presentation of proper credentials. Areas not open to the public may be inspected if appropriate consent is given or if an inspection warrant is secured. Application for any development approval shall constitute permission to inspect a property. Failing permission, no inspection shall be undertaken without an order from a court of competent jurisdiction.

2.1.5. ENFORCEMENT.

The Administrator may hereby commence an action to enforce the provisions of this Ordinance pursuant to NCGS § 160D-404(c), and § 1.6 of this Ordinance.

2.1.6. CONFLICT OF INTEREST

2.1.6.1 No staff member shall make a final decision in the implementation, administration, or enforcement of this Ordinance that involves the determination of facts and the application of objective standards if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member, or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member is prohibited from making a final decision by this section, the staff member's direct supervisor or other City employee designated by the City Manager shall make the final decision.

2.1.6.2. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the City to provide staff support shall engage in any work that is inconsistent with their duties or with the interest of the City.

2.2. BOARD OF ADJUSTMENT.

2.2.1. ESTABLISHMENT.

Pursuant to NCGS § 160D-302, there is hereby established the Board of Adjustment of the City of Kannapolis.

2.2.2. POWERS AND DUTIES.

2.2.2.1. Pursuant to NCGS § 160D-302, the Board of Adjustment shall have the following powers, duties and authority:

- To hear and decide appeals from the decisions of the Administrator in which it is alleged there is an error in an order, requirement, decision, or determination made by the Administrator in the enforcement of this Ordinance (NCGS § 160D-405).
- To hear and decide on applications for variances from the terms of the zoning ordinance pursuant to § 3.7 of this Ordinance and NCGS § 160D-705(d). The Board shall have the authority to place conditions, including time limits, on variances.
- To approve, approve with conditions, or deny applications for special use permits.
- To interpret the Official Zoning Map and shall pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this Ordinance.
- The Board of Adjustment shall exercise such other powers as may be granted by this Ordinance.

2.2.2.2. Quasi-judicial Procedures. The consideration of any appeal, variance, special use permit or interpretation, as provided above, shall be in accordance with the quasi-judicial procedures as set forth in § 3.1.7 and § 3.7 of this Ordinance.

2.2.2.3. Any quasi-judicial matter pertaining to property in the extra-territorial jurisdiction of the City shall only be considered by the Commission with the extra-territorial jurisdiction member present.

2.2.2.4. The Board of Adjustment shall adopt all rules and procedures necessary or convenient for the conduct of its business, consistent with the North Carolina General Statutes.

2.2.2.5. Limitations of Board. The Board of Adjustment shall not have power, jurisdiction, or authority to consider any of the following:

- Make any changes in permitted uses on any zoning classification or zoning district.
- Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

2.2.3. MEMBERSHIP.

2.2.3.1. The City Council shall appoint seven (7) persons to the Board of Adjustment as provided in NCGS § 160D-302(a). The membership shall include proportional representation for extraterritorial areas, as provided in NCGS § 160D-307. Included with the seven appointees, the City Council may appoint alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member. Before serving on the Board of Adjustment, each member shall take the oath of office in accordance with NCGS § 160A-61.

2.2.3.2. Members may be compensated per diem, based upon meetings actually attended and reasonable and necessary expenses, as determined by the appointing Council or by intergovernmental agreement.

2.2.3.3. All members shall serve a term of three (3) years. Members may be reappointed as necessary by the City Council.

2.2.3.4. The City Council may remove any member of the Board of Adjustment for just cause, as may be permitted by law. The City Council shall provide the member with a public hearing, if requested.

2.2.3.5. If any member of the Board of Adjustment shall fail to attend three consecutive (3) regular meetings of the commission within any three-month period, it will be sufficient grounds for

termination of the member's appointment. The chair or the vice-chair, as the case may be, shall immediately file a notification of such nonattendance with the City Council for placement on the Council agenda. The City Council may, by appropriate action, terminate the appointment of such person and fill the vacancy as soon as possible.

2.2.3.6. No member may participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conduct includes, but is not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed *ex parte* communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. Upon objection raised to a member's participation, the remaining members of the Board of Adjustment shall rule on the objection by majority vote.

2.2.3.7. Recording Secretary. The Administrator shall appoint a recording secretary to serve the Board of Adjustment. The secretary shall keep minutes to summarize all proceedings, all attested to by a majority of the members of the Board of Adjustment voting. Minutes of the proceedings of the Board of Adjustment showing the vote of each member and records of its examinations and other official actions shall be filed in the office of the Board as a public record. The Planning Department is hereby designated as the office of the Board for purposes of this subsection. In addition, the secretary shall maintain all records of Board of Adjustment meetings, hearings and proceedings, as well as the correspondence of the Board of Adjustment.

2.2.3.8. Staff. The Administrator shall be the professional staff of the Board of Adjustment.

2.3. PLANNING AND ZONING COMMISSION.

2.3.1. ESTABLISHMENT.

Pursuant to NCGS § 160D-301, there is hereby established a planning agency known as the Planning and Zoning Commission of the City of Kannapolis.

2.3.2. POWERS AND DUTIES.

2.3.2.1. The Commission shall provide an advisory function to assist in making decisions pertaining to amendments to the Comprehensive Plan and this Ordinance, and applications for development approval. The Commission shall have the following powers and duties:

- To exercise any of the powers and/or duties assigned pursuant to NCGS § 160D-301 including, but not limited to, the preparation of a comprehensive plan;
- To prepare amendments to the plan and its elements and to submit the amendments to the City Council;
- To initiate, hear, review, make recommendations to the City Council, and/or make final decisions on applications for amendments to the text of this Ordinance;
- To initiate, hear, review, make recommendations to the City Council, and/or make final decisions on applications for amendments to the Official Zoning Map, and to hear, review, and make a final decision (if an affirmative vote of at least three-fourths of the Commission) on applications for amendments to the Official Zoning Map;
- To hear, review, and or disapprove all applications for major subdivision approval in accordance with the rules and regulations established in Article 6; and
- To adopt bylaws, policies, procedures, and regulations for the conduct of its meetings, the consideration of applications for development approval, and for any other purposes deemed necessary for the functioning of the Commission. All bylaws, policies, procedures, and regulations shall be consistent with this Ordinance and shall be approved by the City Council before taking effect.

2.3.3. MEMBERSHIP.

2.3.3.1. The City Council shall appoint and

provide compensation for nine (9) persons to the Planning and Zoning Commission as provided in this Ordinance. The membership shall include proportional representation for extraterritorial areas, as provided in NCGS § 160D-307. Before serving on the Planning and Zoning Commission, each member shall take the oath of office in accordance with NCGS § 160A-61.

2.3.3.2. The City Council may remove any member of the Planning and Zoning Commission for just cause, as may be permitted by law. The City Council shall provide the member with a public hearing if requested.

2.3.3.3. Members shall be compensated per diem, based upon meetings actually attended and reasonable and necessary expenses, as determined by the City Council.

2.3.3.4. All members shall serve a term of three (3) years. Members may be reappointed as necessary by the City Council.

2.3.3.5. At an annual organizational meeting, the members of the Commission shall elect one (1) of their members as chair and one (1) as vice-chair. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both, the Commission shall elect a temporary chair to conduct the meeting.

2.3.3.6. The chair, or in the chair's absence the vice-chair, shall administer oaths, be in charge of all proceedings before the commission, and take such action necessary to preserve the order and integrity of all proceedings before the commission.

2.3.3.7. If any member of the commission shall fail to attend three (3) regular meetings of the commission within any consecutive three-month period, the chair or the vice-chair shall immediately file a notification of such nonattendance with the City Council for placement on the Council agenda. The City Council may, by appropriate action, terminate the appointment of such person and fill the vacancy as soon as possible.

2.3.3.8. The City shall appoint a recording secretary to serve the Commission. The secretary

shall keep minutes to summarize all proceedings, attested to by a majority of the members of the commission voting. In addition, the secretary shall maintain all records of commission meetings, hearings and proceedings, as well as the correspondence of the commission.

2.3.3.9. The Administrator shall serve as the professional staff of the Commission.

2.3.3.10. No meeting of the Commission may be called to order, nor may any business be transacted by the commission, without a quorum consisting of a majority of the appointed membership of the commission. The chair shall be considered for purposes of establishing a quorum and shall act as a voting member. All planning agency actions shall require the concurring vote of a majority of the members of the Commission unless a more stringent voting standard is prescribed in this Ordinance.

2.3.4. MEETINGS, HEARINGS AND PROCEDURES.

2.3.4.1. The Commission shall establish a regular meeting schedule by rule. Special meetings may be requested by the City Council, the chair of the Commission, a majority of the members of the Commission, or the Administrator.

2.3.4.2. If a matter is postponed due to lack of a quorum, the chair of the Commission shall continue the meeting to the next commission meeting. The recording secretary shall notify all members and all appropriate parties of the date of the continued meeting.

2.3.5. CONFLICT OF INTEREST

2.3.5.1. A member of the Planning and Zoning Commission shall not vote on any advisory or legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

2.3.5.2. In quasi-judicial matters, no member of the Planning and Zoning Commission may

participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conduct includes, but is not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. Upon objection raised to a member's participation, the remaining members of the Planning and Zoning Commission shall rule on the objection by majority vote.

2.4. CITY COUNCIL.

2.4.1. POWERS AND DUTIES.

The City Council shall render final decisions pertaining to amendments to the Comprehensive Plan and this Ordinance, except where authority for a final decision is delegated to another agency by this Ordinance. The City Council shall render final decisions pertaining to applications for development approval where such authority is assigned pursuant to this Ordinance. The City Council shall have the following powers and duties:

- To initiate, adopt, and amend a Comprehensive Plan;
- To initiate amendments to the text and map of this Ordinance and the Comprehensive Plan;
- To review recommendations of the Planning and Zoning Commission, and make final decisions on applications for amendments to the text of this Ordinance;
- To hear, review, and approve, conditionally approve, or deny amendments to the Official Zoning Map after a recommendation of the Planning and Zoning Commission has been submitted pursuant to NCGS § 160D-604. In accordance with § 3.3 of this Ordinance, such amendments shall only be heard by City Council if:
 - the amendment was denied by Planning and Zoning Commission;
 - the amendment was approved, but the affirmative votes represented less than at least three-fourths of the Commission; or
 - a decision of the Planning and Zoning Commission has been made pursuant to § 3.3 of this Ordinance and an appeal has been filed.
- To take such other action not otherwise delegated, as the City Council may deem desirable and necessary to implement the provisions of this Ordinance and the Comprehensive Plan.

the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

2.4.2 CONFLICT OF INTEREST

A member of the City Council shall not vote on any legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member of the City Council shall not vote on any zoning amendment if the landowner of

2.5. (RESERVED).